

(H. B. 1135)

**(No. 195-2018)**

(Approved August 5, 2018)

**AN ACT**

To amend Subsection (a)(1) of Section 6021.02 of Act No. 1-2011, as amended, known as the “Internal Revenue Code for a New Puerto Rico,” for the purpose of ensuring that tax refunds are paid to taxpayers despite Puerto Rico’s bankruptcy (Title III of PROMESA).

**STATEMENT OF MOTIVES**

As part of the public policy of the Government, tax refunds are deemed to be a priority payment. Thus, the commitment of the Governor of Puerto Rico, the Honorable Ricardo Rosselló-Nevores, to honor this administration’s responsibility to refund the money that belongs to the taxpayers is reaffirmed.

It is the intent of this legislation and our responsibility to safeguard the interests of our citizens and provide the necessary tools so that the legislative intent of the Internal Revenue Code for a New Puerto Rico is achieved.

We cannot lose perspective of the fact that tax refund payments to consumers stimulate economic activity in our Island. Such economic activity benefits us during the economic crisis that Puerto Rico is currently undergoing.

The Financial Oversight Board presented a special judicial restructuring process, on behalf of the Government of Puerto Rico, under Title III of PROMESA (Puerto Rico Oversight, Management and Economic Stability Act).

Title III of PROMESA is a special judicial restructuring process created for the territories of the United States.

Title III establishes a process that is a hybrid between Chapters 9 and 11 of the United States Bankruptcy Code which allows for the automatic suspension of all disputes and also provides it with other alternatives. Thus, Title III provides for the Government to continue its operations uninterrupted regardless of whether the obligations were incurred before or after the filing under Title III. It also provides for the Government to negotiate the debt with bondholders as well as pensions, collective bargaining agreements, rulings against the state with regards to individuals or businesses, or any contractual obligations.

Contrary to a traditional corporate bankruptcy procedure, the Government is authorized to pay its suppliers and providers under Title III, as established in the Fiscal Plan approved by the Financial Oversight Board on March 13, 2017. Such payments ensure the services necessary to maintain the Government's operations.

On the other hand, the "Internal Revenue Code for a New Puerto Rico" (Act No. 1-2011, as amended) regulates all that pertains to the tax refunds paid by the Department of the Treasury to taxpayers when excess tax has been paid.

The Internal Revenue Code clearly defines what a tax refund is and how the Department of the Treasury currently handles it. As established in Section 6021.02 (a)(2)(A) of Chapter 2 of the aforementioned Act, tax refunds are considered "payment in excess":

- (A) When the amount of taxes withheld at source in Sections 1062.01, 1062.02, 1062.03, 1062.04, 1062.05, 1062.08, and 1062.11 of Subtitle A exceeds the taxes imposed by said Subtitle against which the taxes withheld should be credited under Sections 1053.01, 1053.02, 1053.04, 1053.05, 1053.07, 1053.08, and 1053.09, the amount of such excess shall be deemed to be a payment in excess, and shall be refunded to the taxpayer as soon as he files the corresponding tax return, notwithstanding the provisions of subsection (a)(1), subsection (j) of

Section 9 of Act No. 230 of July 23, 1974, as amended, the ‘Puerto Rico Government Accounting Act,’ or any other law of the Legislative Assembly.

In Section 6021.02(a)(2)(C) of Chapter 2, contingent upon the Island’s current economic situation, the following exception is established:

- (C) When, in the judgment of the Secretary, the budgetary financial condition of the Government and the Puerto Rico Treasury so require, he may postpone the refund of the remainder of the payment in excess until July 31<sup>st</sup> of the fiscal year following the due date for filing tax returns. In that case, refunds granted administratively under the provisions of this paragraph shall only accrue interest computed from July 31<sup>st</sup> until the date the refund check is issued.

None of the Chapters of the aforementioned Code mention the nonpayment of the tax refund to taxpayers as a result of the Government’s bankruptcy. On the contrary, it provides for the postponement of the tax refund of the remainder of the payment in excess until July 31<sup>st</sup> of the following fiscal year in the event the budgetary financial condition of the Government and the Puerto Rico Treasury so requires it.

We cannot consider a taxpayer’s tax refund as if it were a Government debt to a creditor. Tax payments in excess shall be deemed to be just that, a “payment in excess,” and one of the alternatives provided by the Internal Revenue Code to refund such payment in excess made by the taxpayer is that the Secretary of the Treasury may credit it against any tax debt if the taxpayer so accepts.

The purpose of this Act is to take into account the current interests and financial needs of today’s families as well as to provide mechanisms which are consistent with our current socioeconomic reality. It is necessary for the Internal

Revenue Code for a New Puerto Rico to have additional tools to protect and increase the number of tax refund payments made to citizens, favoring taxpayers, and thus returning to them what is theirs by law.

***BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:***

Section 1.- Subsection (a)(1) of Section 6021.02 of Act No. 1-2011, as amended, known as the “Internal Revenue Code for a New Puerto Rico,” is hereby amended to read as follows:

“Section 6021.02.- Refunds and Credits.

(a) Authorization.-

(1) Payment in Excess.- When a payment in excess of any taxes imposed by Subtitles A and B has been made, the amount of such payment in excess shall be credited, by request of the taxpayer or on the initiative of the Secretary, for which no request to that effect shall be necessary, against any taxes imposed by this Code or the installment thereof which is then enforceable, and any remainder shall be immediately refunded to the taxpayer. Such refund shall be paid to consumers even if the Government of Puerto Rico is undergoing a judicial restructuring process such as Title III of PROMESA (Puerto Rico Oversight, Management and Economic Stability Act) or any other restructuring process, whether voluntary or involuntary, under the applicable federal or local law. In cases in which a taxpayer has requested a tax refund and the Secretary of the Treasury has not issued the payment as of the date of effectiveness of this Act, the taxpayer shall have the option to file a request, in writing or electronically, to have the refund credited against estimated taxes subject to the provisions of Paragraph (3) of this Subsection (a).”

Section 2.- This Act shall take effect immediately after its approval.